

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	11-CR-00587(RJD)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	Thursday, November 20, 2014
PHILSON ANDREWS,	:	11:00 a.m.
	:	
Defendant.	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE RAYMOND J. DEARIE
UNITED STATES SENIOR DISTRICT JUDGE

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1 (In open court.)

2 (Judge RAYMOND J. DEARIE enters the courtroom.)

3 THE COURTROOM DEPUTY: All rise.

4 Will the attorneys please come up to the podium.

5 (Defendant enters the courtroom.)

6 THE COURT: Please be seated, folks.

7 THE COURTROOM DEPUTY: We are on this morning for a
8 sentence. This is United States of America versus Philson
9 Andrews, Docket Number 11-CR-587.

10 Can I ask the attorneys please to note their
11 appearance, beginning with counsel for Government.

12 MS. SMITH: Good morning, Your Honor.

13 Alixandra Smith for the Government.

14 THE COURT: Good morning.

15 MR. TRABULUS: Good morning, Your Honor, Norman
16 Trabulus for the defendant.

17 THE COURT: Mr. Trabulus, good morning.

18 Mr. Andrews, good morning.

19 THE DEFENDANT: Good morning.

20 THE COURT: Are we ready to proceed?

21 MR. TRABULUS: Yes.

22 THE COURT: I think I am ready. I think I am ready,
23 but I have a number of questions.

24 MR. TRABULUS: Okay.

25 THE COURT: There is statements in the report that

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1 Mr. Andrews supplied the weapon for this particular robbery.

2 Mr. Andrews, according to Mr. Trabulus, denies that.

3 What is the Government's position on that?

4 MS. SMITH: Your Honor, the Government's position
5 based on information from a cooperator who had been prepared
6 to testify at trial, that it was Mr. Andrews that had procured
7 the gun that was used during the robbery.

8 THE COURT: Oh.

9 Are we headed toward a Fatico hearing on that? Is
10 that the request of the defense?

11 MR. TRABULUS: If Your Honor redeems that as
12 material to sentencing, I think we would have no choice,
13 Your Honor, but I think this cooperator has a history of
14 lying, including about that gun.

15 So, but let me just ask Mr. Andrews whether he wants
16 it, if Your Honor deems it material to sentence.

17 THE COURT: Before you ask him, let me give you the
18 full picture.

19 MR. TRABULUS: Okay.

20 THE COURT: Mr. Andrews, as well, according to
21 counsel, denies involvement in any of the robberies and I take
22 it your position is the same. According to a cooperator, he
23 was involved in a series of armed robberies?

24 MS. SMITH: Right. The series of robberies that
25 took place in April of 2011.

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1 THE COURT: Well, the robbery in question here took
2 place.

3 MS. SMITH: In June of 2011.

4 THE COURT: Is that right?

5 Excuse me, a second. You are right.

6 MS. SMITH: I believe there were two on April 23rd.

7 THE COURT: What about that? Do I have a fellow?
8 Do I sentence him as if he were in, has pled guilty to an
9 isolated armed robbery, or is this a fellow who as been in a
10 whole series? Certainly it seems the relevant for purposes of
11 sentencing.

12 Would you be prepared to go forward to attempt to
13 substantiate the claim that he was involved in other
14 robberies?

15 MS. SMITH: Not prepared to go forward today.

16 THE COURT: No, I do not mean today.

17 MS. SMITH: It would be based on cooperator
18 testimony.

19 THE COURT: Is that a yes?

20 MS. SMITH: That's a yes. I mean, we were prepared
21 at trial. Your Honor had excluded as 404(b), I believe. So
22 we weren't necessarily going to introduce that information at
23 trial.

24 THE COURT: One thing has little to do with the
25 other.

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1 MS. SMITH: No, I recognize that. So when I say we
2 had been prepared to produce at trial, that we would be.

3 There were also, I mean, there were a series of
4 robberies in 2007 as well. We do not, as far as I know, have
5 information other than the fact that the defendant was charged
6 with a whole series of them and pled guilty to one.

7 THE COURT: Otherwise, I tend to agree with
8 Mr. Trabulus on his application of the guidelines.

9 The only, the close question being, is it Mr. Bacon?
10 The second hostage, for lack of a better way to put it, is
11 that Mr. Bacon?

12 MR. TRABULUS: There was no second hostage here.
13 There was Mr. Kane was the hostage.

14 THE COURT: Kane.

15 MR. TRABULUS: Mr. Kane.

16 THE COURT: That is a closer question, but I do not
17 see it as foreseeable. Not surprising. It is interesting.
18 It was not surprising that something like this would happen --

19 MS. SMITH: Right.

20 THE COURT: -- when the police show up on the scene
21 almost immediately, according to Mr. --

22 MS. SMITH: Mr. Kane.

23 THE COURT: Yes.

24 MS. SMITH: I don't think it's in dispute that they
25 showed up pretty much.

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1 MR. TRABULUS: By the way, Your Honor --

2 THE COURT: But the plan was to get in and get out.

3 MR. TRABULUS: Correct.

4 THE COURT: So, I do not see it as foreseeable. I
5 do not see it as surprising. So I tend to agree with his
6 calculation of the guidelines.

7 MS. SMITH: On the two-point restraint enhancement.

8 THE COURT: Yes. I do not know that there is
9 anything else --

10 MR. TRABULUS: There's a dispute as to Criminal
11 History Category, Your Honor, and it's a fairly technical
12 argument about whether or not the 2004 conviction for the 2003
13 crime counts. And that is, it's the difference between
14 Criminal History Category III, which is what I maintain and
15 Criminal History Category IV, which is what the Government
16 maintains and what the Probation Department maintains, and I
17 can summarize that for Your Honor pretty quickly.

18 THE COURT: To be quiet frank, I was so much
19 concentrating on the events of the robbery itself and that I
20 missed it. Go ahead.

21 Does it have to do with the juvenile adjudication?

22 MR. TRABULUS: It was a youthful offender
23 adjudication, and there's no dispute that a youthful offender
24 adjudication can count as an adult conviction.

25 THE COURT: Right.

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1 MR. TRABULUS: But the issue here is this, and it's
2 a narrow issue, and it's not presented to the case law.

3 In this case, he received, as a result of his
4 youthful offender adjudication, a sentence that could not
5 lawfully have been applied to an adult offender. It's not
6 just that he received a lower sentence that he would have
7 received had he not gotten a youthful offender adjudication.
8 It was actually a sentence that would have been an illegal
9 sentence if given to an adult, and the prosecution would have
10 been able to appeal it and would have been successful.

11 So, the reason that I say that that's important is,
12 that under the guidelines, Your Honor, there is a commentary
13 and the commentary says that if somebody receives an adult
14 sentence, then that five-year cutoff period doesn't count,
15 doesn't apply, and in that event, the conviction would have
16 count.

17 THE COURT: Right.

18 MR. TRABULUS: Would count.

19 So, my contention, Your Honor is, in this somewhat
20 unusual situation, where you have a sentence, where you have
21 commentary that says an adult sentence, and you have a
22 sentence that could not lawfully have been given to an adult,
23 irrespective of the fact that he was a Y0, irrespective of the
24 fact that he served time at an adult institution, it wasn't an
25 adult sentence.

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1 So, that's what my argument is based on.

2 MS. SMITH: Your Honor, the Government --

3 THE COURT: I have never confronted it before. He
4 is certainly at an adult facility.

5 MS. SMITH: Yes. The Government addresses it at
6 page 9 to 10 of its brief.

7 Basically, any sentence that you're going get, once
8 you are adjudicated as a youthful offender, it's quite common
9 to get a sentence that you wouldn't have gotten as adult.
10 That's kind of the whole point of the youthful offender
11 scheme.

12 I had put in my brief a case from 2007. Basically,
13 I think Mr. Trabulus's argument is that because he received an
14 indeterminate sentence of one to three years in prison, that
15 somehow, because that sentence wouldn't have been available if
16 he had been convicted as an adult, it's not an adult sentence.

17 But those aren't the factors the courts have looked
18 to. They look to where the sentence is served; where you were
19 convicted, if you are convicted in adult court or juvenile
20 court, and I have the Amante case, which is on page 10, which
21 is a 2007 Second Circuit case, where the Second Circuit
22 concluded that the District Court had not erred, obviously
23 doing that analysis of the underlying sentence.

24 Where the defendant had been sentenced to two terms
25 of one to three years a similar indeterminate sentence, and

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1 that had been determined as an adult conviction. Looking
2 again at the underlying factors, what court are you in when
3 the sentence is administered, where are you serving your time,
4 not simply kind of what does the number look like as opposed
5 to what you could have gotten if you hadn't been adjudicated
6 as a youthful offender.

7 MR. TRABULUS: Your Honor, with regard to that
8 Amante case, it didn't present the precise issue here and the
9 argument wasn't raised either.

10 It's true that the defendants there received an
11 indeterminate sentence of one to three, which is the same
12 sentence he received earlier on, but there's nothing in the
13 record to indicate that the defendants there could not have
14 received that sentence as an adult and, in fact, although you
15 can't tell what the earlier convictions were for, they were
16 apparently narcotics offenses and in New York, if you have a
17 class B -- a class C narcotics conviction, which is a common
18 conviction, even on a sale as a plead-down, to C from a B, one
19 to three is a permissible sentence.

20 So, I don't think that Amante, in Amante the
21 argument that I'm making was raised, nor necessarily was the
22 factual predicate there, although you can't tell from the
23 Amante decision.

24 THE COURT: And the difference would be Category III
25 or IV?

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1 MR. TRABULUS: That's correct.

2 MS. SMITH: Category III or IV.

3 So, if Your Honor doesn't believe that the two
4 points for the restraint apply, so we are in 18, the
5 difference if it's an 18 in Category III, is 33 to 41. If
6 it's Category IV, it's 41 to 51.

7 Obviously, in addition to the 120, for Count 3.

8 THE COURT: Well, I do not know that it matters
9 because I think in either I have sufficient range given the
10 ten-year consecutive to sentence this chap. What matters more
11 to me is the question that I raised initially, which is, are
12 we going proceed to an evidentiary hearing on the question of
13 the gun?

14 But let me go on.

15 There is a portrayal of this series of events in the
16 robbery, that is, one might say, quite favorable to
17 Mr. Andrews. His attempts, for example, to persuade his
18 colleague to release the folks as the police had demanded.
19 Apparently, his attempts over a couple of hours sort of soften
20 this guy up.

21 Is this consistent with your understanding of the
22 facts?

23 MS. SMITH: It's consistent in some senses and not
24 others. I don't think that there is any dispute that there
25 were attempts at different points by Mr. Andrews to, for

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1 example, get Mr. Peters to put the gun down. There was some
2 discussion of his having let the hostage go.

3 There is no question that all three of them were
4 drinking in the back of the store and that things got a little
5 fast and loose at different points, and there were statements
6 by Mr. Kane.

7 THE COURT: I read his statement. I read his
8 recorded statement.

9 MS. SMITH: Well, the recorded statement, I will
10 just say for the record, Your Honor, the Government never
11 received that recorded statement. I don't know the full
12 transcript of what was said. It was done by a defense
13 investigator who did not advise Mr. Kane that he was being
14 recorded, and I, because the Government's never received the
15 full recording, I do not know what else was in that recording.

16 MR. TRABULUS: Actually, the Government has been
17 shown the full transcript of the recording, although not the
18 recording itself. I didn't show it to Ms. Smith. I did show
19 it to her predecessor AUSA in the course of plea negotiations
20 way back when, Your Honor.

21 And if, you know, the Government hasn't given me the
22 witness statements either. So I think we are both in an
23 equal position there. The Government said that it's
24 consistent in some ways and implied there's some ways it is
25 different. The Government says it is something different, I'd

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1 like to hear what it was, because I don't think there really
2 is anything different, Your Honor. It's pretty clear.

3 Mr. Kane had no great love for either of the two
4 people who robbed him. He thought far better of Mr. Andrews
5 than he did of Mr. Peters. It's clear.

6 But this was a robbery. It was an armed robbery.
7 None of these people who were interviewed, and we had all
8 three of them interviewed, some of them spoke at greater than,
9 length. Mr. Kane at greater length, none said that
10 Mr. Andrews abused them. That is clear that Mr. Andrews was
11 at the door, told people to lie down, get on the floor, I
12 should say.

13 Mr. Peters, who is their witness, Your Honor, lied
14 in his plea allocution that he didn't rob one of the other
15 people in there and he did. In fact, he was charged with that
16 robbery and that the proceeds of it were recovered. They were
17 found on the floor.

18 He also apparently lied to the Government that the
19 gun discharged accidentally. The gun didn't discharged
20 accidentally. Mr. Andrews was aware of only one discharge,
21 because I think he was in the basement when the other
22 discharge occurred, and he might not have heard it, but it
23 didn't discharge accidentally.

24 Mr. Kane made it perfectly clear when he was
25 interviewed that Mr. Peters's held it near his head and

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1 discharged it and said, this is so you know it's loaded.

2 I mean, it was a pretty extreme circumstance and
3 Mr. Andrews acquitted -- acquitted is the wrong word -- you
4 know, he showed a certain amount of decency, Your Honor, which
5 you don't normally expect. I mean, not only did he say he was
6 sorry to Mr. Kane, and try to make him feel better in terms of
7 what was going on, he got down on his hands and knees and
8 prayed with him when Mr. Kane said he wanted to pray. And
9 most importantly, Your Honor, I don't know whether he saved
10 any lives or not, but he was -- he was on the inside, the
11 police were on the outside, they were the ones that -- he
12 asked them for more time and he needed more time because he
13 was working on Mr. Peters. He was trying to get him to calm
14 down.

15 Mr. Kane said that he, Mr. Andrews, asked Mr. Peters
16 six times to hand over the gun, which is a dangerous thing to
17 do, to go up to somebody who has already threatened to shoot
18 and kill himself and says he wants to go out in a blaze of
19 glory and has fired the gun and asks him to hand it over.

20 He never did hand it over, but he did get him to
21 relax. They drank. Peters got drowsy, Kane got a little
22 tipsy, he was less tipsy because he wasn't drinking that much,
23 he wanted to keep his head about him.

24 Your Honor, that's what happened, and I think if
25 Mr. Kane were brought in here, and I have absolutely no desire

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1 to bring him in here, I could turn over the full transcript to
2 the Government, or to the Court if they want it. It's not a
3 perfect transcript, but I have heard the recording. I could
4 turn over the recording itself. That's what's going on.

5 I would hope, Your Honor, that in terms of a Fatico
6 hearing, I do strongly maintain that that gun, which was lied
7 about. When Peters was arrested, he immediately said to the
8 police, because he didn't know that they knew better, that it
9 was Andrews who had the gun inside the liquor store.
10 Everybody is unanimous that Andrews never had the gun.

11 So, he has a history of lying specifically about
12 this incident and about this gun. He said it discharged
13 accidentally. He said that it was Andrews's gun. I mean, on
14 the limited issue of -- if it's material to sentencing on a
15 limited issue of whether or not the gun came from Andrews, or
16 came from Peters, I would talk to Mr. Andrews about whether he
17 wanted a Fatico hearing.

18 On the other issue as to whether or not the
19 April robberies, I'd like to have an opportunity to speak to
20 him at some length on whether he would want that.

21 THE COURT: How is it that Peters was before
22 Judge Matsumoto?

23 MS. SMITH: The entire case was in front of
24 Judge Matsumoto and then when this defendant decided to go to
25 trial, Judge Matsumoto had a scheduling conflict and so this

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1 piece of it wound up in front of Your Honor.

2 THE COURT: Oh.

3 MR. TRABULUS: Can I say something about the history
4 of this case, because it's a long history, Your Honor, and I
5 want Your Honor to understand something about it, because when
6 you have a long history like that, you may get the impression
7 that the defendant was in some way or other playing around.

8 This case would have resolved a lot, long ago, if it
9 had been agreed, as it now is agreed, that Mr. Andrews is not
10 a career offender. The Government had offered him a plea way
11 back when which, in fact, would have been more favorable to
12 him than the plea that he took, because aside from the fact
13 that he would have gotten three points for acceptance of
14 possibility, he would have pled just to brandishing the gun.

15 The Government recognized that he was not
16 responsible for discharge of the gun, and indeed, acted to
17 prevent it from being discharged to the extent he could.

18 But the Government was taking the position that he
19 was a career offender and the plea agreement provided that,
20 and I eventually prevailed upon the Government to allow an
21 exception to the waiver of appeal provision to allow an appeal
22 of that, but they still were saying that they wanted, that
23 they were taking that position, and that, Your Honor,
24 seriously caused this case not to resolve a long time before
25 it actually did resolve.

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1 We did resolve it, even though the Government had
2 not yet come to that. By that time, I had done the research,
3 more of the research, there had been more case law, and I
4 advised Mr. Andrews that I was quite confident that he was not
5 a career offender. And on that basis, we resolved this.

6 I just want Your Honor to know something about that.
7 The Government was prepared to recognize that he was not
8 responsible for the discharge and let him plead to something
9 that carried a seven-year sentence instead of a ten-year
10 sentence under 924(c).

11 MS. SMITH: Your Honor, I just want to make the
12 record clear.

13 This case belonged to a different AUSA, and whatever
14 plea offer Mr. Trabulus is referring to, was not, pre-dated my
15 involvement in the case.

16 THE COURT: Fair enough.

17 MR. TRABULUS: That's true.

18 MS. SMITH: I don't think that that's necessarily an
19 appropriate discussion to have in the context of sentencing.

20 There was a superseding indictment. There's no
21 question that the gun was discharged. There is no question
22 under Second Circuit law that he is responsible for that
23 discharge, and that's what he pled guilty to.

24 MR. TRABULUS: I agree, Your Honor. There is no
25 question that under Second Circuit and U.S. Supreme Court law,

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1 he is responsible for that, because even an accidental
2 discharge is something that he's responsible for.

3 THE COURT: In a way, he is a very lucky fellow.
4 Stop and think about what might have happened in that liquor
5 store.

6 MR. TRABULUS: That's right.

7 THE COURT: If that weapon was fired into somebody's
8 chest, he would be on the hook for felony murder.

9 MR. TRABULUS: That's right, Your Honor. He is,
10 partially along with Mr. Peters, responsible for the emergency
11 that he helped alleviate and solve. There's no question about
12 that.

13 I'm not asking Your Honor to pin a medal on him.

14 THE COURT: I understand.

15 MR. TRABULUS: But the facts are as they were
16 presented.

17 THE COURT: He has escaped career offender status, I
18 think, correctly. I agree with you, but narrowly.

19 MR. TRABULUS: Yes.

20 THE COURT: He is a very lucky fellow.

21 Two, three, he has a lawyer who knows what he is
22 doing and goes to work for you, by the way, at taxpayer
23 expense, I might add.

24 You are a very lucky fellow. And yet I am faced
25 with somebody who either just cannot stop holding up liquor

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1 stores, or was that an isolated incident.

2 In a way, I do not know how terribly germane, it is
3 certainly germane, but with that ten-year kicker, you know,
4 for a, you know what I am saying man, we are already starting
5 at a substantial sanction. So I am not so sure it makes all
6 the difference in the world.

7 But have your conversation with him. If you need
8 more time, I am happy to put it over, but --

9 MR. TRABULUS: If I could, either at the table there
10 or in the pen, I would like to talk --

11 THE COURT: Wherever you are more comfortable.

12 MR. TRABULUS: The table would probably be good,
13 well, as long as the microphone is off.

14 THE COURT: I will be ready when you are.

15 (Recess taken at 12:25 p.m.)

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1 (In open court.)

2 (Judge RAYMOND J. DEARIE enters the courtroom.)

3 THE COURTROOM DEPUTY: All rise.

4 (Defendant enters the courtroom.)

5 THE COURT: Sir.

6 MR. TRABULUS: Yes, Your Honor.

7 I've met with Mr. Andrews. On the question of the
8 previous robberies, and we're talking about the robberies in
9 April involving Mr. Peters and Darsky Sylvestre, we are not
10 going seek a Fatico hearing, Your Honor. We acknowledge that
11 Your Honor has to, in light of his record, has to sentence him
12 on the basis that he's hardly an angel, that he has been
13 involved in this type of activity before and we are not going
14 to seek that.

15 On the question, however, of whether or not he
16 supplied the gun as opposed to Mr. Peters, if that is material
17 to sentencing, Your Honor, if that is material to Your Honor's
18 sentencing decision, then we would want a Fatico hearing,
19 because Mr. Andrews very strongly has maintained that that gun
20 was Mr. Peters, and I point out that the other incidents in
21 April of 2011 that we're talking about here, I think I might
22 have said 2009 before, the other robberies that we've been
23 talking about, it was Peters who had the gun. It was Peters
24 who had the gun and the allegations were that Mr. Andrews was
25 in a car outside.

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1 THE COURT: Here is my reaction.

2 For two reasons, I think I can confidently conclude
3 that it is not material.

4 Number one, Mr. Peters's statements about the gun
5 already has been shown to be suspect.

6 But number two, given the range of punishment here,
7 particularly the sentence required on Count 3, as I said
8 earlier in the proceeding, I think I have ample latitude to
9 sentence this gentleman at a level that I think is a
10 responsible and reasonable sentence.

11 So that is my reaction.

12 If that avoids the necessity of a factual hearing,
13 and you are both content with that, so be it. We will proceed
14 on that basis.

15 MR. TRABULUS: Yes.

16 MS. SMITH: Yes, Your Honor.

17 THE COURT: All right.

18 Mr. Trabulus, I am going to give you the benefit of
19 the doubt on the criminal history, although my guess is the
20 Government's probably got the better argument, but I do not
21 think it affects my number. So I will give you the benefit of
22 the doubt on the issue of criminal history, which would put us
23 at a range of Counts 1 and 2, 32 to 41, if I am not mistaken
24 with the consecutive sentence required on Count 3.

25 Are we all on the same page there?

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1 MS. SMITH: Yes, Your Honor.

2 MR. TRABULUS: Yes. And on the restraint also?

3 THE COURT: Yes.

4 MR. TRABULUS: I'm sorry, my mind was trying to
5 think of what I was about to say, thank you.

6 MS. SMITH: So the total combined range would be 133
7 to 161; is that right?

8 MR. TRABULUS: 153 to 161.

9 MS. SMITH: Yes, excuse me.

10 THE COURT: Correct. I will turn it over to you,
11 sir.

12 MR. TRABULUS: Yes, Your Honor.

13 I think in one way or another, I touched on
14 everything that I was going to say, except that Your Honor
15 said something which made me think a little bit.

16 Your Honor says that Mr. Andrews was lucky, lucky
17 that the gun when it was discharged, that the bullet didn't
18 hit somebody in the chest and lucky to have me to make
19 arguments on his behalf and address the guideline issues and
20 so forth.

21 THE COURT: I do not throw out compliments easily or
22 often. When I do, I mean them.

23 MR. TRABULUS: I appreciate it, but the point that
24 I'm getting to, Your Honor, is that there were people who were
25 lucky and I know it only goes so far, Your Honor, but there

1 are people that were lucky that it was Mr. Andrews in that
2 liquor store and not somebody else with Mr. Peters, because he
3 really did act in a way which, although it certainly was
4 motivated by his own self-interest, he didn't want to die in a
5 fusillade of bullets from the police. He didn't want anybody
6 else to either. He kept a level head and he did what he could
7 to defuse a situation.

8 I don't know whether any lives were saved as a
9 result of that, and if so, whether those lives included those
10 of police officers and law enforcement people. But
11 Your Honor, it was a potentially explosive situation,
12 disastrous situation, that turned out well and it turned out
13 well because of the efforts of the police, but also because of
14 the efforts of Mr. Andrews inside there. And I hope that that
15 is taken into account in considering sentencing and I ask
16 Your Honor to take it into account.

17 Your Honor, as Your Honor has adverted to the
18 substantial amount of time that is required under Count 3, the
19 ten years, and what I would say is, looking at this case and
20 looking at this case alone, and you are going to hear from
21 Mr. Andrews, too, about where he is now, I would say,
22 Your Honor, and I understand that a consecutive component is
23 called for by the statute and it's certainly their policy,
24 reasons for it, but I am submitting, Your Honor, that not that
25 much more than ten years suffices to comply with the purposes

1 of 3553(a) here.

2 I ask Your Honor to consider sentencing Mr. Andrews
3 to below the bottom of the guidelines of 153 months in light
4 of the history here and the circumstances of this, you know,
5 what transpired, thank you.

6 THE COURT: There is an issue that I neglected to
7 raise at the outset.

8 With respect to the plea, I do not know that this --
9 as I understand it, he is not an American citizen.

10 MR. TRABULUS: Yes, Your Honor, he is not an
11 American citizen. We've discussed that he is -- I've advised
12 him that he is facing mandatory deportation. This is being an
13 aggravated felony.

14 If I recall correctly, that may not have been
15 addressed at the plea colloquy.

16 THE COURT: It was not.

17 MR. TRABULUS: In fact, I wasn't certain at the time
18 whether he was an American citizen.

19 There are some other things also that I don't think
20 were absolutely addressed at the plea colloquy, which I would
21 raise with Your Honor.

22 The plea colloquy occurred before the Rosemond case
23 was decided, and I don't think he was specifically asked
24 whether he knew in advance of the robbery whether or not there
25 was a gun to be involved. But I think he would be prepared to

1 state that Peters showed him the gun before they went in
2 there, so he did know about it.

3 With regard to the, I've discussed the immigration
4 consequences with him multiple times, including before the
5 plea, because there were conflicting information in the
6 documents that I received. Some of them showed a birth place
7 of New York. Others showed a birth place somewhere in the
8 West Indies.

9 So Your Honor, I would be, if the Court has
10 questions of Mr. Andrews about that, I think it might be
11 appropriate.

12 THE COURT: Well, let me turn to the Rosemond matter
13 because that was my next point, just so that we -- if he had
14 supplied the gun and that had been a stipulated fact, we would
15 not really have much of an issue. But in light of his
16 position which may well be valid, I have to ask, Mr. Andrews,
17 before you entered this liquor store, the plan was to conduct
18 an armed robbery; is that fair to say?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And you knew that your friend had a
21 weapon on him?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You saw it before you entered the store?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And I assume you knew as well he would

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1 use it brandish it, maybe not fire it, but brandish it during
2 the course of the robbery?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, you are not an American citizen;
5 correct?

6 THE DEFENDANT: A resident.

7 THE COURT: Permanent resident.

8 THE DEFENDANT: Yes.

9 THE COURT: I understand.
10 But not a citizen.

11 THE DEFENDANT: Yes.

12 THE COURT: So, as Mr. Trabulus has stated, this
13 subject ideally should have broached at the time of your plea
14 as a consequence of your conviction, you will likely be
15 removed from the United States.

16 Do you understand that?

17 THE DEFENDANT: Before I got arrested, I was
18 supposed to put in an application to get my American citizen,
19 but I got arrested on that.

20 THE COURT: What did you have?

21 THE DEFENDANT: My passport, everything. I was
22 supposed to do the application, fill out my, to get American
23 citizen passport, but I got arrested on that. If I was on the
24 street right now, I would have had my American passport.

25 THE COURT: Well, you have to assume for purposes of

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1 today's proceedings that you are going to be deported when you
2 finish your sentence.

3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, if that is, and that is a
6 consequence of your plea.

7 So, before I can actually accept your plea, I have
8 to satisfy myself that you understand that, and nonetheless,
9 you are prepared to stand by your pleas of guilty.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: And do you wish to continue in your
13 pleas of guilty?

14 THE DEFENDANT: Yes.

15 THE COURT: And you have had discussions with
16 counsel about it?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: So you understand the consequences.

19 THE DEFENDANT: Yes, sir.

20 MR. TRABULUS: We also discussed Rosemond after it
21 came down and I advised him that, in fact, the allocution
22 wasn't sufficient there, but he told me he wanted to persist
23 in his plea of guilty.

24 THE COURT: Okay.

25 Based on the information provided in the transcript

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1 of the plea proceeding, as supplemented in my discussions
2 today with Mr. Andrews, I find that at the time he fully
3 understood his rights, subject to today's discussion, he now
4 understands his rights, the consequences, possible
5 consequences of his pleas, and that there are factual bases
6 for the pleas of guilty.

7 I now, therefore, formally accept the pleas to
8 Counts 1, 2 and 3 of the indictment bearing Docket Number
9 11-CR-587.

10 Anything else, Mr. Trabulus?

11 MR. TRABULUS: Not from me, Your Honor.

12 THE COURT: Anything from the Government?

13 MS. SMITH: Your Honor, I think we've laid out our
14 position pretty clearly in the sentencing memo, unless Your
15 Honor has any questions.

16 THE COURT: Fair enough.

17 And Mr. Andrews, anything you would like to say,
18 sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Please, take your time. Go ahead.

21 THE DEFENDANT: I wrote you a letter.

22 THE COURT: I have it.

23 THE DEFENDANT: I want to read it to you.

24 THE COURT: Go right ahead.

25 THE DEFENDANT: Your Honor, I would like to

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1 apologize to the Court and to my family for the crime I
2 committed. My mother has supported my entire life and I let
3 her down. It hurt me to be away. It hurts me be away from
4 her. I take full responsibility for my action.

5 I understand the pain I caused the victim. I
6 understand the crime I had -- I understand my crime had a
7 negative effect on society. I am full of remorse and regret.
8 I would like to sincerely apologize to the victim.

9 I have used these past months to do some serious
10 soul searching. I want to change my life and do whatever I
11 can to become better man. I want to live life as a
12 law-abiding citizen. I want to get a job. I want to walk
13 away from my past life and never look back. I want to make my
14 mother proud.

15 Thank you, Your Honor, for your time and
16 consideration.

17 THE COURT: Those are certainly appropriate things
18 to say and I assume you are sincere. The proof of the pudding
19 will be when you are released. You are a young man. You have
20 the opportunity to, not without challenges, I understand, but
21 you have time and the opportunity to turn in a different
22 direction. Everyone hopes you not only want to do it, but
23 that you have the strength to do it. It is going to take
24 personal strength and courage.

25 You seem like a decent guy. I do not know why I get

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1 that, notwithstanding, I am dealing with somebody who goes
2 into stores and conducts armed robberies.

3 MR. TRABULUS: I won't disagree with you,
4 Your Honor. I think he is, notwithstanding that.

5 THE COURT: I wish you well.

6 I am going to impose a sentence of 24 months on
7 Counts 1 and 2, and 10 years on Count 3, to run consecutive to
8 the sentences imposed on Counts 1 and 2.

9 \$100 special assessment on each count.

10 Five-year supervised release.

11 I think that is an adequate range, given what is
12 before me, given the ten-year mandatory sentence to address
13 any reasonable sentencing objective. Let's hope I am right.

14 MR. TRABULUS: Your Honor, I have two requests.

15 One is that Your Honor recommend designation to
16 Allenwood. I think, it's pretty clear to me that he's going
17 to be scored in a way that could cause him to go to a
18 penitentiary. That's a nearby one. It also has a medium,
19 which I have a hunch he would graduate to, and it's also close
20 to his family.

21 The other request I have, even though I don't know
22 whether or not there would be an appeal, I will discuss with
23 him whether he wishes one, was to, the permission to have the
24 minutes.

25 THE COURT: Granted.

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1 MR. TRABULUS: Thank you.

2 THE COURT: I will voice the recommendation and the
3 judgment. We will see what the Bureau of Prisons does.
4 Certainly, in his interest to be as close to family as is
5 possible.

6 Anything else?

7 MS. SMITH: No, Your Honor.

8 There was an underlying indictment which we
9 obviously move to dismiss.

10 THE COURT: That application to dismiss the
11 underlying indictment is granted.

12 Anything else, sir?

13 THE DEFENDANT: Thank you, sir, for everything.

14 THE COURT: Good luck.

15 THE DEFENDANT: Thanks.

16 THE COURTROOM DEPUTY: Note no fine. Judge Dearie
17 imposed no fine.

18
19 (Matter concluded.)

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21 ooo0ooo

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VB OCR CRR